

BOARD OF ZONING APPEALS

MINUTES

6:30 PM

March 20, 2013

City Council Chambers

MEMBERS PRESENT: Bernie Bossio, Tom Shamberger, Leanne Cardoso, George Papandreas and Jim Shaffer

MEMBERS ABSENT: None

STAFF: Christopher Fletcher, AICP

I. CALL TO ORDER AND ROLL CALL: Bossio called the meeting to order at 6:30 PM and read the standard explanation of the how the Board conducts business and rules for public comments.

II. MATTERS OF BUSINESS:

A. Minutes for the February 20, 2013 Hearing: Fletcher advised the Board that the minutes were not complete and approval would have to be postponed.

III. OLD BUSINESS

A. CU10-10 / Traugh / 344 High Street: Request by Brandon Kupec, on behalf of "Big Zach Productions, LLC" (d/b/a "Lira Restaurant") for an amendment to a previously approved conditional use petition for a "Restaurant, Private Club" at 344 High Street; Tax Map 26A, Parcels 107 and 109; B-4, General Business District.

Fletcher read a Memorandum that stated Brandon Kupec and Michael Bowyer seek the Board of the Zoning Appeals' approval to transfer the beneficiary assignment of the related conditional "Restaurant, Private Club" use approval from Big Zach Productions, LLC (d/b/a "Lira Restaurant") to Triple L Emporium, LLC (d/b/a/ "The Dancing Fig"). Addendum A of this memorandum identifies the location of the subject site.

Because the Board's August 18, 2010 approval of CU10-10 included a condition that said approval could not be transferred, the Board must approve Mr. Kupec and Mr. Bower's request.

The following exhibits are attached hereto for review and consideration by the Board:

- The Board's approval letter dated August 19, 2010 concerning its August 18, 2010 approval of CU10-10 including conditions.

- West Virginia Secretary of the State (WVSOS) documentation changing the member/manager of Big Zach Productions, LLC from Zachary Traugh to Brandon Kupec (obtained from the WVSOS website).
- WVSOS Certificate of a Limited Liability Company for Triple L Emporium, LLC documenting that Michael A. Bowyer is the only current member of the limited liability company (obtained from the WVSOS website).
- WVSOS Certificate of Registration of Trade Name authorizing Triple L Emporium, LLC to transact business in West Virginia under the assumed name of "The Dancing Fig" (obtained from the WVSOS website).
- Two email correspondences from Brandon Kupec concerning the present matter before the Board.
- A letter of explanation of the present request to transfer the subject conditional use beneficiary dated February 28, 2013 from Brandon Kupec, on behalf of Big Zach Productions, LLC, Michael Bowyer, on behalf of Triple L Emporium, LLC, and Janet Ferraro, Executive Chef and Manager of "Lira" and "The Dancing Fig".
- Resume submitted by Janet J. Ferraro.
- Resume submitted by Michael Andrew Bowyer.
- A lunch and dinner menu for "The Dancing Fig Restaurant & Venue".

Bossio recognized the petitioner, Brandon Kupec of 209 Green Street, who currently owns "Lira Restaurant". Mr. Kupec stated the restaurant had been operating for two years and he no longer has the time for the business anymore. His intention is to transfer the ownership to Michael Bower who would then operate the restaurant as "The Dancing Fig". Janet Ferraro has been the executive chef and general manager of "Lira Restaurant" for the past two years. Both Mr. Bower and Ms. Ferraro had worked together in the past at the Vintage Room and therefore bring a lot of experience and new ideas to this restaurant. The intent is for Mr. Bower to purchase the establishment and Ms. Ferraro will manage the restaurant. The conditional use permit that had previously been approved will continue and the establishment will operate the same or similar to how the restaurant is currently.

Papandreas stated that he owned property within 200 feet of the restaurant location and wanted to give the petitioner the opportunity to request that he recuse himself if appropriate. Kupec stated he had no disputes with Papandreas on the Board.

There being no further comments or questions by the Board, Bossio opened the public hearing asking if anyone was present to speak in favor of or in opposition to the request. There being none, Bossio declared the public hearing closed and asked for Staff recommendations.

Fletcher stated that Staff recommends the Board approve the requested beneficiary assignment transfer of the August 18, 2010 conditional "Restaurant, Private Club" use granted under Case No. CU10-10 for "Lira Restaurant" located at 344 High Street on Parcels 107 and 109 of Tax Map 26A from "Big Zach Productions, LLC" to "Triple L Emporium, LLC" and that "Triple L Emporium, LLC" and its managers, officers, employees, and agents shall comply with the

conditions set forth by the Board in its August 18, 2010 approval of CU10-10, which are stated in the related approval letter dated August 19, 2010, as well as the requirements set forth in Paragraph 27, Article 1331.06 "Supplemental Regulations Pertaining to Permitted Land Use Table" of the Planning and Zoning Code.

Shamberger made a motion to approve the amendment to the conditional use approval granted for Case No. CU10-10 thereby transferring the beneficiary assignment along with conditions recommended by Staff; seconded by Papandreas. Motion carried unanimously.

Bossio reminded Mr. Kupec that the Board's decision can be appealed to Circuit Court within thirty days and that any work related to the Board's decision during this period would be at the sole financial risk of the petitioner.

IV. NEW BUSINESS:

- A. CU13-05 / Mutt's Place / 263 Beechurst Avenue:** Request by George Vrooman for conditional use approval of a "Private Club" use located at 263 Beechurst Avenue; Tax Map 19, Parcel 22.1; B-2, Service Business District.

Fletcher read the Staff Report stating that according to the West Virginia Alcohol Beverage Control Administration (WVABCA) website, a WVABCA private club license for "Mutt's Place" at 2129 University Avenue was first issued in February 1982. According to the West Virginia Secretary of State (WVSOS), the current ownership of the establishment is Mutt's Place, Inc., for which Mr. George Vrooman is listed as secretary and owner.

The property on which "Mutt's Place" is currently located was included in the recent real estate acquisition by West Virginia University, which is bound by University Avenue, Third Street, Grant Avenue, and Houston Drive. This newly assembled site will be redeveloped by WVU's public-private partnerships mixed-use "University Place".

The petitioner seeks to relocate the Mutt's Place establishment by converting the use of the commercial storefront at 263 Beechurst Avenue from an "Art Gallery" use to a "Private Club" so that the establishment can obtain a new private club liquor license from WVABC. "Private Club" uses require conditional use approval by the Board of Zoning Appeals. Addendum A of this report illustrates the location of the subject site.

According to the petitioner, the existing 2129 University Avenue location of Mutt's Place is 880 square feet. The proposed 263 Beechurst Avenue location would be 1,134 square feet, which would be an increase in area of 254 square feet for the establishment.

Located on the second and third stories above the commercial storefront at 263 Beechurst Avenue are four one-bedroom mixed-use apartments.

The minimum parking requirement for the subject building, including the four one-bedroom mixed-use dwellings and the proposed private club, would be 16 to 18 parking stalls.

The existing building appears to cover nearly the entire, if not all, the subject property and no on-site parking spaces are available.

Although the petitioner states in his application exhibits that most of his customers at the 2129 University Avenue location were walk-ins from residents of the Sunnyside Neighborhood, the proposed 263 Beechurst Avenue location is situated on the opposite side of Beechurst Avenue from the heart of the neighborhood. Additionally, there does not appear to be any formal public parking spaces on the west side of Beechurst Avenue for several blocks in either direction. Therefore, access for the majority of the establishment's long and well-established patron base will be crossing Beechurst Avenue, which serves as a primary and heavily traveled north-south corridor.

The current dumpster location appears to be situated along the side and rear of the building, which may be encroaching into the right-of-way and/or onto the adjoining property to the rear of 263 Beechurst Avenue (see illustration below).

Even if the dumpster is not encroaching as the illustration below indicates, a sufficient location or adequate area does not appear to exist where a formal dumpster enclosure can be developed to properly screen and manage what will become a heavily utilized facility. Specifically, the proposed change in land use will significantly increase the amount of refuse generated by the establishment (i.e., bottles, cardboard, food related waste, etc.).

Fletcher noted that a letter of opposition from Mr. Don Corwin is included in the meeting packet.

Fletcher noted that he met with the property owner and petitioner, who both felt there would be adequate room for a dumpster. The petitioner questions parking that may or may not exist along the rail-trail. Fletcher made a recommendation for the Board to table the matter to schedule a site visit with the petitioner to gain a better understanding of the surroundings and review the parking areas in question.

Bossio asked if Fletcher communicated to Mr. Vrooman his recommendation to table the discussion until the Board has a chance to visit the site. Fletcher confirmed.

Bossio recognized the petitioner, George Vrooman of 214 Morgan Point, who stated the present Mutt's location had been sold and he wants to stay in the Sunnyside area. He notified Fletcher of the situation and asked him for direction on the perimeters allowed and explained that he didn't want to leave the area. Fletcher had previously told him that his establishment is currently zoned B-2 and if he stayed within that zoning area, he would be able to relocate without obtaining a new license. Vrooman noted that when some people read the words "private club" or "private bar" they get the wrong idea and their initial reaction is debauchery. Vrooman explained that his establishment is a small bar that has been in the area since 1982. Mutt's was originally located on Beechurst Avenue in 1933 and remained at that site until the late 1970's.

Vrooman distributed pictures to the Board which displayed available parking spaces located under the PRT and alongside the Glasshouse Grille. Vrooman stated that he is unsure of who owns the parking spots shown in the pictures. There are 17 spaces located underneath the PRT, which are currently used by students and people visiting nearby businesses. There is also a dumpster located on the property. A sign that states "Resident and Customer Parking Only" is located in that area. Vrooman explained that he sought parking to meet the requirements that had been discussed prior with the Planning Department and discovered it was already available. He noted that decal parking is located a block over on University Avenue and Mutt's Place would encourage their customers to use that area because it is free parking from Friday evening

to Monday morning. There are seven businesses planned for the street underneath a proposed building [Beech View Place Apartments] that will house 400 tenants and will require parking as well. The Planning Staff suggested that Vrooman reach out to the owner of that proposed building to see if a parking garage would be provided for that development or if other plans were in place. Vrooman expressed that Mutt's Place is a neighborhood bar and he knows the kids that are coming in as well as their parents when they are in town to visit. Mutt's is a different atmosphere from the downtown establishments, which are considered more of night club atmosphere, and his establishment is a neighborhood pub. He understands the idea that people are going to need parking but noted that his previous location only had four spaces for a capacity of 88. He noted that Mutt's has a social atmosphere with a strictly over 21 age requirement.

Papandreas asked who owned the parking areas in the pictures that were distributed. Vrooman stated that there are spots along the river and past the Glass House Grille. Upon reading a letter, he was told the property was being rented or involved in a purchase between the City and the railroad company. Vrooman asked if other people or businesses are using the spots for parking. He stated that there is a dumpster on the property that is being used by Papa Johns, and if they are using the dumpster on someone else's property, then it would be like downtown with parking spaces on a first come, first serve basis. He noted that the bar closes at 2:00 AM and parking spaces would be available in the morning. He also noted that if the spots available are for people that use the rail trail, it is most likely not used after dark and therefore parking spots would be open.

Vrooman explained to the Board that he took the pictures of the sign to demonstrate how an ordinary person would feel it is okay to park in an area with a sign that reads "Resident and Customer Parking".

Papandreas stated that if it's not his property and he is not leasing it, then there is no formal agreement to be using the property. He noted that first come first serve parking on private property doesn't work like it does downtown when it is public parking. Vrooman understood and stated that his first assumption when looking at the property was that it is owned by the City.

Fletcher explained that the subject property is the rail-trail property and that the City leases it for a long-term period for the purpose of maintaining the trail facility. As he understands, the City has not accepted the road along the PRT and rail-trail facility and therefore the City does not perform road maintenance. He noted that certain parking spots along the road appear to be in the general rail-trail right-of-way because it was never organized and managed. Discussions have occurred internally over the years to try and identify areas that could increase the supply of parking in that area because there are a lot of different uses and activities and the road has strange property lines and boundaries. Fletcher encouraged a site visit for the Board to gain a better understanding of the area.

Bossio asked Fletcher if the Board could consider the parking in that area when there is no lease agreement possible.

Fletcher stated that things are done differently under a conditional use and referred to the Staff Report where within the recommendations it is stated that if approved, Staff recommends it be conditioned upon a variance request and or a conditional use for off-premise parking. He does

not know if the parking can be included as it will require consultation with the City Engineer and City Attorney.

Bossio stated that he feels the petition should be tabled until a site visit can occur by the Board.

There being no further comments or questions by the Board, Bossio opened the public hearing asking if anyone was present to speak in favor of the request.

Bossio recognized Bill Morlino of 2045 University Avenue, who is the seller of the building. Morlino stated that the building had been there since the early 1900's and occupies 90% - 95% of the property. His contention is that no parking requirements currently exist for the building. There have been a series of businesses in the building over the years and it's obvious that parking cannot be provided for that building and therefore a requirement never existed. Morlino explained that the area had been a B-3 zone that was changed to a B-2 zone, with no parking requirements. He stated that Steve Fanok informed him and Fletcher that the road is a paper street and the City does not want to get involved because they will have to maintain it. Morlino explained that the parking area goes with the rail trail and is City property and therefore open to anyone that wants to use it. He noted that his building is the only one between First Street and Third Street with no parking available. He explained that there are four spaces that can be created on the street which is 24 feet wide. The upper part of Third Street is 21.5 feet wide and there is parking on the right hand side of that street. There are 17 spaces that can fit down in the rail trail area. When referring to the Staff Report, he noted there is a crosswalk located a block down where people can cross the street safely. There is a seven-foot distance between the building and the street and the dumpster is six feet wide which sits at an angle and would not encroach the right of way if it is positioned the appropriate way. He believes that the parking is grandfathered and feels that Mr. Corwin's letter is filled with innuendos and half-truths.

There being no further comments in favor of the request, Bossio asked if anyone was present to speak in opposition to the request.

Bossio recognized Don Corwin, manager of Wincor Properties, LLC, 251 Beechurst Avenue and stated they are in opposition to the conditional use request for Mutt's place. He supports small businesses but doesn't feel this business fits the character of the neighborhood in an improving and growing area, specifically the major development of Beechview Place which is 85% complete. He spoke with adjacent property owners, and they have expressed their opposition to this as well. His business leases commercial parking spaces to Papa John's pizza and the Lavendar Café, as they are required to provide parking to their customers and tenants in the buildings. His understanding is the parking area under the PRT is owned by the B & O railroad and leased back to the rail trail authority for specific use in conjunction with the rail trail. There have been a number of meetings to discuss that area, including with public works, police department, code enforcement, and at that time they did not want to deal with that piece of property for maintenance. The parking is for general use to the public but it is not associated with this property. Corwin stated that the bottom line is his business provides parking for his commercial tenants and this particular applicant is not providing the same thing so the board must consider the precedent that they would set by granting an off-site parking variance for this establishment.

There being no further public comments, Bossio declared the public hearing closed.

Papandreas made the motion to table CU13-05 in favor of a site visit to evaluate the parking and other area surroundings of the building; seconded by Shaffer. Motion carried unanimously.

Fletcher stated that a site visit would be accordingly scheduled prior to the Board's April hearing.

V. OTHER BUSINESS:

A. Public Comments (matters not on the agenda): None.

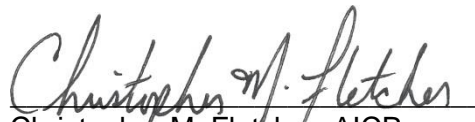
B. Staff Comments: None

VI. ADJOURNMENT: 7:07 PM

MINUTES APPROVED:

May 2, 2013

BOARD SECRETARY:


Christopher M. Fletcher, AICP